



THE COMMONWEALTH OF MASSACHUSETTS
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June 24, 2002

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Boston Gas Company, D.T.E. 02-37

Dear Secretary Cottrell:

By letter dated May 21, 2002, Boston Gas Company ("Boston Gas" or the "Company") filed a request to extend the term of its current performance-based ratemaking ("PBR") plan established in *Boston Gas Company*, D.P.U. 96-50 (Phase I) (1996) for an additional year.¹ To implement this proposal, the Company indicated that it would submit a so-called "Sixth Annual Compliance Filing" to the Department on September 15, 2002, which would apply the existing PBR formula to establish rates for effect on November 1, 2002. The result is most likely a \$3 million base rate increase for customers.

Boston Gas indicated that although it notified the Department on March 27, 2002 that it intended to file a base-rate proposal on May 15, 2002, it has since decided, for a number of reasons, to delay the filing of the base-rate case. At the present time, the Company anticipates a 2003 base-rate filing that will encompass both the establishment of new cast-off rates, using a traditional cost-of-service ratemaking approach, and a proposal to extend or modify the PBR Plan established for the Company in D. P. U. 96-50. In addition, the Company indicated that it is evaluating the potential for consolidating the rates of Boston Gas with those of Colonial Gas Company and Essex Gas Company to create a unified set of rates for the distribution companies operating in Massachusetts as KeySpan Energy Delivery New England. Boston Gas maintains that the rate consolidation planning process is underway, but significant work remains to be done.

In response to the Company's request, the Department issued an Order of Notice

¹ In D. P. U. 96-50, the Department approved a five-year term for Boston Gas' PBR Plan. The five-year term of the PBR Plan allowed for five successive annual adjustments, according to a specific PBR formula.

requesting Comments on the proposal and setting a date for a public hearing. The Attorney General submits this letter as his Comments concerning the Company's request to extend the PBR.

The Attorney General has no objection to the Company's request to delay the filing of a base rate case and the filing of a new PBR proposal until 2003. However, he does object to the requested 1-year extension of the PBR and corresponding rate increase. In D. P. U. 96-50 the Department approved a five-year PBR plan for the Company. The existing PBR plan expired on November 1, 2001. The Department initially directed the Company to file **by September 15, 2001** a proposal to succeed Boston Gas' current PBR plan. Although it is laudable that the Company wishes to further delay the filing until it can develop a more comprehensive approach, this does not however provide the evidentiary or legal basis to increase rates.²

The Department has clearly indicated that it would conduct an evaluation of the expired PBR before making a decision concerning modification and “[d]epending upon the results of **this evaluation**, the plan may be extended without modification for an additional term, extended with modifications, or terminated.”³ D.P.U. 96-50, p. 320. The required evaluation has not occurred and the Company has requested that this evaluation not occur until 2003.⁴ The Attorney General considers the proposed “Sixth Annual Compliance Filing” as a general increase in rates, prices and charges for gas requiring the Department to make an investigation as to the propriety of such proposed changes. *See* G.L. c. 64 § 94.⁵

Therefore, the Attorney General requests that the Department reject the Company's

² “It is premature for the Company to assume that its PBR plan will be merely extended for another term, in the same form and substance as approved herein. By this Order, the Department has approved a five-year term for Boston Gas's PBR plan. At the end of the term of the PBR approved herein, Boston Gas may propose modifications to the PBR.” D.P.U. 96-50 (Phase I), pp. 15-16.

³ When Verizon's price cap PBR expired, the Department terminated that plan and opened an investigation to review the appropriate plan to succeed price cap regulation for Verizon. *Version*, D.T.E. 01-31. Reasoned consistency requires the same result here. *Boston Gas Company v. Department of Public Utilities*, 367 Mass. 92 (1975)

⁴ The Company's own expert witness does not support an extension without further Department review. Mark N. Lowry, Ph.D., testified during hearings that “my vision of how a price cap plan would be updated for Boston Gas or other gas distributors is that at the end of the five-year period there would be a recalculation of the TFP trend, in essence, an updating of it, and that would capture any unforeseen productivity growth or lack thereof that might occur over the next five years...So there would be a natural truing up process if the price cap plan was renewed in a conventional way...[and with respect to adjustments for inaccuracies]... It would be updated to reflect the most recent available data and thereby would capture the recent productivity growth. If it turned out that growth was substantially more rapid or less rapid than that which occurred over the last ten years, then it would be reflected and there would be a different X factor because of it.” Tr. 16, pp 26-27.

⁵ “Given the relative lack of experience with PBRs in the gas distribution industry, it would be speculative to presume what modifications, if any, a PBR approved in 1996 would require in the year 2001.” D.P.U. 96-50 (Phase I), p. 15, n. 8.

request to extend the PBR.⁶ If the Department grants the Company's request, then the Attorney General requests that the Department conduct a full cost of service rate investigation, including discovery and evidentiary hearings, into the September 15 filing.

Sincerely,

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Enc.

cc: Caroline O'Brien, Hearing Officer (w/enc.)
Service List (w/enc.)

⁶ An extension of the original term beyond November 31, 2001, in the absence of hearings on a proposed term extension raises due process issues. *See* G.L. c. 30A, §11; the Department's Procedural Rules, 220 C.M.R. §§1.00 *et seq.* There is no evidence in this record to support the Company's claim that it has a "substantial revenue deficiency."